

In The
Supreme Court of the United States

October Term, 1976

No. 76-864

CITY OF LAFAYETTE, LOUISIANA AND
CITY OF PLAQUEMINE, LOUISIANA,
Petitioners

versus

LOUISIANA POWER & LIGHT COMPANY,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION, ET AL. FOR
LEAVE TO FILE BRIEF AMICUS CURIAE

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**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE**

The Movants identified below hereby respectfully move for leave to file a brief as *amicus curiae* in support of Louisiana Power & Light Company in the afore-captioned proceeding. The attorneys for Louisiana Power & Light Company have consented to the filing of the brief, but the attorneys for Petitioners, the Cities of Lafayette and Plaquemine, Louisiana, have refused consent.

Movants and Pertinent Related Information

National Rural Electric Cooperative Association, ("NRECA") 2000 Florida Avenue, N.W., Washington, D.C., 20009. NRECA is the national trade-service association of its approximately 1,000 members, which are comprised preponderantly of rural electric distribution cooperatives but also of bulk power supply cooperatives, statewide trade-service associations of electric cooperatives and other related types of entities. (All of the additional Movants listed following are members of NRECA.)

Georgia Electric Membership Corporation, ("GEMC") 148 Cain Street, Suite 845, N.E., Atlanta, Georgia, 30303. GEMC is the statewide trade-service association of all of the 42 distribution electric cooperatives corporately sited and operating in that state.

Association of Illinois Electric Cooperatives, ("AIEC") 6460 South Sixth Frontage Road, Springfield, Illinois, 62708. AIEC is the statewide trade-service association of all of the 28 distribution electric cooperatives as well as the two power supply electric cooperatives corporately sited and operating in that state.

Association of Louisiana Electric Cooperatives, Inc., ("ALEC") 10725 Airline Highway, Baton Rouge, Louisiana, 70816. ALEC is the statewide trade-service association of 13 of the 14 distribution electric cooperatives and the one power supply electric cooperative corporately sited and operating in that state.

North Carolina Electric Membership Corporation, ("NCEMC") 3333 North Boulevard, Raleigh, North Carolina, 27611. NCEMC is the statewide trade-service association and power supply agent of all of the 28 distribution electric cooperatives corporately sited and operating in that state.

Oklahoma Association of Electric Cooperatives, Inc., ("OAEC") 2325 N.E. Expressway, Oklahoma City, Oklahoma, 73111. OAEC is the statewide trade-service association of all 27 of the distribution electric cooperatives and of the two power supply electric cooperatives operating in the State of Oklahoma, all but one of which (Arkansas Valley Electric Cooperative, Ozark, Arkansas) are corporately sited in that state.

South Carolina Electric Cooperative Association, Inc., ("SCECA") 808 Knox-Abbott Drive, Cayce, South Carolina, 29033. SCECA is the statewide trade-service association of 17 of the 18 distribution electric cooperatives and of the two power supply electric cooperatives corporately sited and operating in that state.

Texas Electric Cooperatives, Inc., ("TEC") 8140 Burnet Road, Austin, Texas, 78766. TEC is the statewide trade-service association of 78 distribution electric cooperatives and two power supply electric cooperatives corporately sited and operating in that state.

Virginia Association of Electric Cooperatives, ("VAEC") 5601 Chamberlayne Road, Richmond, Virginia, 23227. VAEC is the statewide trade-service association of all of the 15 distribution electric cooperatives corporately sited and operating in the State of Virginia, of both of the distribution electric cooperatives corporately sited and operating in the State of Maryland, and of the one distribution electric cooperative corporately sited and operating in the State of Delaware.

Fairfield Electric Cooperative, ("Fairfield") P. O. Box 150, Winnsboro, South Carolina, 29180. Fairfield is a distribution electric cooperative corporately sited and operating in the State

of South Carolina. It is a member of SCECA and NRECA. Sioux Valley Empire Electric Association, ("Sioux Valley") Colman, South Dakota, 57017. Sioux Valley is a distribution electric cooperative corporately sited and operating in the State of South Dakota. It is a member of NRECA.

The some 1,000 member rural electric cooperatives comprising NRECA's membership are located in 46 of the 50 states, including Alaska. They range in size of patron membership from only a few hundred to as many as 50,000, but the average size is in the order of about 9,000. Altogether, they furnish electric service to over 8,000,000 meters—residential, farm, commercial, institutional, Governmental and industrial—representing an estimated 25,000,000 men, women and children in the United States.

Interests and Grounds for Motion

The question presented for determination by the Court in this case is whether state-created municipalities are immune to the proscriptions of the Sherman Act, 15 U.S.C. §§ 1 *et seq.* The issue arose in litigation between Louisiana Power & Light Company and the two Petitioner Cities in Louisiana, and involved, generally, charges and countercharges of antitrust conduct relating to competition between the litigants in the business of selling electric service.

The Respondent Company is a privately owned public utility operating for profit in the State of Louisiana. These Movants, including particularly the distribution and power supply electric cooperatives which are actually moving parties or which are the members of and represented by the Movant associations, are similar in some respects but substantially dissimilar in others to the Respondent Company and similar investor-owned public utility companies. Both types of entities are engaged in the business of furnishing and selling electric service to the public, but there the similarities virtually end. The following dissimilarities constitute one of the major reasons these Movants respectfully say to the Court that, while they

have direct interests in the outcome of this case, those interests will not be adequately represented by the Respondent Company:

Both distribution and power supply electric cooperatives are organized, almost invariably, under special enabling acts of their respective states—that is, enabling acts that are different from the acts under which investor-owned profit electric public utility companies are incorporated. These acts invariably command the cooperatives to operate on a non-profit basis or at as near cost as is consistent with sound business principles. (This does not mean that they are prohibited from realizing an *economic* profit, but that they cannot realize a legal, taxable profit—that is, they cannot so operate that revenues are derived from one group of persons and the excess thereof over expenses distributed as dividends or interest payments to a different group of persons.)

A further dissimilarity is that every one of such distribution and power supply cooperatives has been debt financed by loans from the United States Rural Electrification Administration ("REA"), pursuant to the Rural Electrification Act of 1936, as amended, 7 U.S.C. §901 *et seq.* The REA Administrator may make loans to these cooperatives only for the purpose of furnishing electric service to persons in "rural areas" who are not receiving central station service. 7 U.S.C. §902. The term "rural area" is defined to mean "any area . . . not included within the boundaries of any city, village or borough having a population in excess of fifteen hundred inhabitants . . ." but the term includes "both the farm and nonfarm population" of such areas. 7 U.S.C. §913.

In addition to the federal "rural area" limitations as set forth foregoing, many of the individual state enabling acts contain the same or comparable limitations. The general effect of these federal and state limitations is to impose a substantial restriction on the ability of these cooperative systems to attain and maintain economic feasibility. Such limitations have been

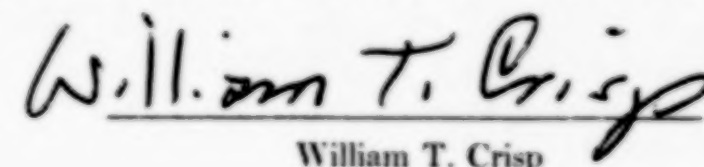
augmented by proliferate litigation in many states where co-operatives are sued (often successfully, including in the State of Louisiana) for the purpose of compelling them to remove their facilities or yield up their going business operations in areas which have become newly annexed within the corporate limits of municipalities.

Thus, the anti-competitive practices which lie at the core of this case, and the overriding question whether those practices by a municipality are subject to the sanctions of the Sherman Act, are of crucial concern to the Movants.

Movants respectfully submit that, from their differentiated posture in the industry and in the industry practices involved in the central legal issue presented in this case, they have unique concerns with respect to the resolution of that legal issue, they will be directly affected by this Court's resolution of that issue, and they are in position to shed different and important light on that legal issue in aiding the Court to reach its decision herein.

Respectfully submitted.

CRISP, BOLCH, SMITH, CLIFTON & DAVIS


William T. Crisp

May, 1977

CERTIFICATE

I hereby certify that two copies of the foregoing Motion have been served on counsel of record for all parties to this proceeding by placing the same in the United States mail, postage prepaid, this _____ day of May, 1977.

William T. Crisp